

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNIMATION ENTERTAINMENT

VS.

DOES 1-1,427, *et al*

§
§
§
§
§

NO. 2:11cv269

ORDER TO CONDUCT RULE 26(f) CONFERENCE

The defendant having appeared, the court hereby directs the parties to confer as required by Fed. R. Civ. P. 26(f) no later than **SEPTEMBER 28, 2011**.

In addition to a discussion of the items set forth in Rule 26(f), the parties shall attempt in good faith to agree on certain matters, including deadlines for a proposed Scheduled Order, and shall file with the court a joint written report outlining their proposals no later than **OCTOBER 14, 2011**.

The parties must include the following matters in the joint conference report:

1. A factual and legal description of the case which also sets for the elements of each cause of action and each defense;
2. The date the Rule 26(f) conference was held, the names of those persons who were in attendance, and the parties they represented;
3. A list of any cases that are related to this case and that are pending in any state or federal court with the case numbers and court;
4. An agreed discovery/case management plan, if an agreement can be reached, (a sample Scheduling Order form is enclosed, and the parties are to submit a completed Scheduling Order with their joint conference report), which includes proposed deadlines for the following:

- a. Joining additional parties;
 - b. filing amended pleadings;
 - c. filing any motions to transfer, to remand, to dismiss, for summary judgment, or other dispositive motions;
 - d. disclosures of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule 26(b);
 - e. filing any objections or challenges to any other party's experts;
 - f. pre-trial disclosures pursuant to Fed. R. Civ. P. 26(a)(3); and
 - g. completion of all discovery.
5. A suggested date for the final pre-trial conference (see enclosed list of the court's available dates) at which time the trial will be scheduled;
 6. The expected length of trial;
 7. Whether the parties jointly agree to trial before a magistrate judge;
 8. Whether a jury demand has been made; and
 9. Whether the parties request a conference with the court pursuant to Fed. R. Civ. P. 16(b) before entry of the Scheduling Order.

The joint conference report should be signed by counsel for each party and by any unrepresented parties.

All parties should keep in mind that failure to participate fully in the Rule 26(f) conference or to submit the joint conference report may result in the imposition of

sanctions authorized by Rule 16(f) Fed. R. Civ. P.

SIGNED this 12th day of September, 2011.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SAMPLE PLAINTIFF

VS.

SAMPLE DEFENDANT

§
§
§
§
§

NO. _____

(SAMPLE)
SCHEDULING ORDER

After reviewing the report from the parties required by Fed. R. Civ. P. 26(f), the court hereby enters the following Scheduling Order pursuant to this court's Local Rule CV-16 and Fed. R. Civ. P. 16:

- (1) Other parties shall be joined by _____. (A motion for leave to add parties is not necessary provided parties are added by this date, otherwise, leave of court is required. The date to add parties should be at least 60 days before the deadline for filing motions listed in (3) below.)
- (2) Amended pleadings shall be filed by _____. (A motion for leave to amend is not necessary if filed before this date; however, this date should be at least 30 days before the deadline for filing motions listed in (3) below.)
- (3) All motions to transfer, motions to remand, motions to dismiss, motions for summary judgment, or other dispositive motions, and *Daubert* motions shall be filed by _____. (In order for the court to make a ruling on these motions before the final pre-trial conference, this date should be at least 60 days before the final pre-trial conference.)

- (4) Disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b) shall be made by the plaintiff by _____, and by the defendant by _____. Thereafter, each party shall have until _____ to object to any other party's expert witnesses. Such objections shall be made by a motion to strike or limit expert testimony and shall be accompanied by a copy of the expert's report in order to provide the court with all of the information necessary to make a ruling on any objection.
- (5) Pre-trial disclosure pursuant to Fed. R. Civ. P. 26(a)(3) shall be made by the plaintiff by _____, and by the defendant by _____. Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the court for good cause.
- (6) All discovery shall be commenced in time to be completed by _____. (This date should be a date at least 90 days before the final pre-trial conference (10).)
- (7) This case shall be mediated by _____. If the parties agree on a mediator, they shall so notify the court in writing of the name, address, and telephone number of the mediator by _____. Otherwise, the court will select a mediator.
- (8) A Joint Final Pretrial Order prepared in accordance with Local Rule CV-16(b) and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in non-jury cases) shall be delivered by the plaintiff to the court by _____. (This date should be a date at least 10 days before the final pre-trial conference.) In order to enable the plaintiff to prepare and deliver the Joint Final Pretrial Order and Joint Proposed Jury Instructions and Verdict Form (or proposed Findings of Fact and Conclusions of Law in non-jury cases) to the court, and to enable the defendants and any third-parties to participate in the preparation of such documents, the plaintiff shall provide the plaintiff's share of the necessary information to all other parties by _____. Thereafter, all

defendants and third-parties shall provide their share of the information to plaintiff by _____.

- (9) Any motions in limine shall be filed by _____. (This date should be at least 10 days prior to the final pre-trial conference date (10).)
- (10) This case is set for a final pre-trial conference on _____. (Select a date from the enclosed list of final pre-trial conference dates.)
- (11) Jury selection be begin on _____. (Day following pre-trial conference).

OTHER LIMITATIONS. All depositions to be read into evidence or shown in court as part of the parties' case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence or shown in open court. Parties are strongly encouraged to limit total deposition time to no more than one hour per deposition to be read or shown in court.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FINAL PRE-TRIAL CONFERENCE DATES*
FOR JUDGE DAVID FOLSOM

October 3, 2011
March 5, 2012
October 1, 2012

*Use one of the dates listed above to complete item number (10) of the Scheduling Order.